such a business is highly speculative but I don't think there is anything to prevent the plaintiffs at the expiration of the Lease and if they get possession to enter into separate leases or tenancies with the present sub-tenants or licensees such as the Happy Cabaret & Co., Ltd., the Tai Thong Restaurant Ltd., and others and thereby collecting substantial rentals.

I also asked myself the question: Should I sanction the sale in the face of the strong opposition of practically all the defendants and Mr. Okell? The plaintiffs cited the case of *In re Beale's Settlement Trusts*[4] in support of their contention that the Court can sanction a sale even if all the beneficiaries *sui juris* objected. The headnote of that case reads:—

"Where, in the case of a trust for sale, 'any requisite consent cannot be obtained,' because the person from whom it must be obtained refuses it, the Court, under s. 30 of the Law of Property Act, 1925, and s. 57 of the Trustees Act, 1925, can direct the trustees for sale to sell."

The *Beale's case*[4] can be distinguished from the present case in that in the former case there was a trust for sale whereas in the present case the trustees are specifically prohibited by the will from selling immovable property.

I find that in the cases that were cited to me during the course of this hearing the trustees and the beneficiaries had combined together to apply to the Court for approval of a compromise, scheme or transaction. I am not aware of any case, nor has one been cited to me, where the trustees have come to the Court for the approval of a compromise, scheme for sale, in the face of opposition by a majority of the beneficiaries.

I think that in the present case, where practically all the defendants, who represent a majority of the income beneficiaries, and Mr. Okell, who represents the corpus beneficiaries, are against the sale of the Trust Property, I should not approve the Agreement.

Then there is the question of whether the sale price of $2,000,000 is adequate. In my opinion the objection of the defendants and Mr. Okell as set out in para. (B) (ii) above is a valid one. I am not satisfied that the sale price of $2,000,000 is adequate.

Another unsatisfactory feature of the Agreement is that the Estate will not be getting any interest from the Company for part of the purchase money which will be outstanding for seven years. During the course of the hearing, however, the plaintiffs informed the Court that the Company was willing to pay interest, as much as 10%, on the balance outstanding.

The result, therefore, is that I am unable to approve the Agreement.

Order accordingly.

Solicitors: *Rodyk & Davidson; Drew & Napier; Sisson & Delay; Braddell Bros.*

TEO PENG CHOW & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) January 18, 1957]

[J. B. — Criminal Appeal No. 40 of 1956]

Societies Ordinance, 1949, s. 9 — "Office-bearers" of an unlawful society — "Assisting in its management" — Not an essential ingredient in a charge under s. 10 — Societies (Registration) Rules, 1953, rr. 3 & 6.

Criminal Procedure Code (Cap. 6), s. 156 — Charge not duly amended — Appellant misled — Conviction set aside — Re-trial.

It is not an essential ingredient to an offence alleged to be committed by "office-bearers" of an unlawful society against the provisions of section 10 of the Societies Ordinance, 1949, that they "had assisted in the management of that unlawful Society".

Where, therefore, the charge against the appellants alleged that they, as office-bearers of an unlawful society, assisted in its management, was not duly amended at the close of the prosecution's case, and the appellants were convicted, the conviction was set aside.

MAGISTRATE'S CRIMINAL APPEAL.

The following statement of facts is taken substantially from the judgment of Buhagiar J.: On December 22, 1955, the Assistant Registrar of Societies, Malacca and Johore, received an application from the Min Lok Club for the registration of that club as a society under the Societies Ordinance, 1949; the application was signed by the three appellants as office-bearers. The receipt of this application was acknowledged on December 23, 1955 and a letter was also sent to the applicants drawing their attention to rule 6(2) and (3) of the Societies Rules, 1953, and section 9 of the Societies Ordinance, 1949. The club was eventually refused registration on September 1, 1956; but on February 11, 1956, a raid was carried out by the police on the premises of the said club where various persons were found occupied in the game of mahjong, others were seated round a writing table; at least one of the persons present tried to escape. The three appellants were not amongst those present. Certain documents were also found and from Exhibit P. 7 it appears that the number of members had increased from 15 on the date of application for registration to 54 on the January 28, 1956.

Omar Salleh for the appellants.

Bahaudin bin Md. Yaacob (Federal Counsel) for the respondent.

Buhagiar J.: — In this case the three appellants were charged as follows:—

"That you on or about 11.2.56 at No. 40, Main Road Senai New Village, Kulai, in the State of Johore, being Office Bearers of Unlawful Society to wit the MIN LOK CLUB, (did assist in the management of the abovesaid Unlawful Society) and thereby committed an offence punishable under Section 10 of Ordinance No. 28/1949."

There was also an alternative charge with which it is not necessary to deal.

At the close of the case for the prosecution the defendants submitted that there was no case to answer as there was no evidence to show that the accused managed or assisted in the management of the society. The defendants were called upon to make their defence and the three alternative courses were explained to

them; they elected to say nothing and called no witnesses. The learned Magistrate found the defendants guilty, convicted them and sentenced them to imprisonment for one day and a fine of $500 each, and in default a further imprisonment for a period of five months.

The grounds of appeal with which it is necessary to deal are :—

(a) that the learned Magistrate was wrong in fact and in law in holding that the appellants were office-bearers of the Min Lok Club; and

(b) that the learned Magistrate was wrong in fact and in law in holding that the appellants did assist in the management of the said Club or had anything to do with what was going on at the said Club on the 11th February, 1956.

[The learned Judge stated the facts substantially as set out above and continued :]

Now in his grounds of judgment the learned Magistrate made a specific finding of fact that the three appellants were office bearers; he said :-

"After examining all the exhibits produced before the Court and scrutinizing the evidence for the prosecution very carefully, it is impossible for me to regard the story of the prosecution as other than proved beyond all reasonable doubt that the three accused were office-bearers of the Min Lok Club."

There is, however, no finding of fact that the appellants managed or assisted in the management of the said Club. All the learned Magistrate said was : On examination of the Register Book (Ex. P.7) I found that the number of members was increased when P.W.2 visited the Club from 15 to 54."

On the hearing of the appeal the learned Deputy Public Prosecutor argued that the words "did assist in the management of the above-named Society" used in the charge were unnecessary; he submitted that the words "managing or assisting in the management of any unlawful society" used in section 10 of the Societies Ordinance, 1949, qualify "any person" but not "office-bearer", and where the defendant is proved to be an "office-bearer" of an unlawful society he is guilty of an offence whether or not he has managed or assisted in the management of that unlawful society. The learned Magistrate found that the appellants were office-bearers of an unlawful society and was therefore right in convicting them.

The learned Counsel for the appellants, on the other hand, submitted that the words I have referred to above, as used in the charge, were essential ingredients to the offence under section 10 of the Societies Ordinance, 1949, as the words "managing or assisting in the management" qualify both "office-bearer" and "person". Very ingeniously he argued that his contention was supported by the provisions of the rules made under the Societies Ordinance that is the Societies (Registration) Rules, 1953 (L.N. No. 214 of 1953) where under rule 3 applications for registration as a registered or as an exempted society are to be made in Form 1 of the Schedule thereto and is to be signed by three principal office-bearers of the society. The learned counsel for the appellant submitted that if the words "managing or assisting in the management" do not qualify also "office-bearer" then any person who is an office-bearer for the purpose of signing the application for the registration of a society would, by virtue of the rules themselves, be made to commit an offence. I do not think there is any substance in this submission; the learned counsel for the appellants seems to have overlooked the provisions of rule 6(2) of the Societies (Registration) Rules, 1953. From these Rules it is to me clear that while it is in order for office-bearers to sign applications for registration under rule 3, they cannot thereafter under rule 6 perform any functions in connection with the society "excepting only application to or correspondence with the Registrar, unless such activity has been approved in writing by the Registrar".

I hold, therefore, that the words "did assist in the management of the abovementioned Society" used in the charge were unnecessary for an offence alleged to be committed by "office-bearers" against the provisions of section 10 of the Societies Ordinance, 1949.

The next point to consider is whether this error in the charge is material or not and whether the provisions of section 156 of the Criminal Procedure Code applies. Under that section an error in a charge is not material unless the accused was in fact misled by such error or omission. It seems from the grounds of judgment of the learned Magistrate that he did not consider the words in the charge referred to above were an essential ingredient in an offence under section 10 but he did not amend the charge at the close of the case for the prosecution and at that stage counsel for the defendant submitted that there was no case to answer on the ground that there was "no evidence to show that the accused managed or assisted in the management of the club and no evidence that all three accused arranged a meeting on behalf of the club." Under the circumstances I do not think it can be said that the appellants were not misled by the error in the charge. I, therefore, set aside the conviction and sentence and order re-trial before another Magistrate.

Re-trial ordered.

Re AL KAF SETTLEMENT

[O. C. J. (Whyatt C.J.) January 23, 1957]

[Singapore — Summons-in-Chambers No. 1019 of 1956]

Settlement — Trust to class of beneficiaries — Whether class is to be ascertained at a particular date or is to be ascertained from time to time when each periodical payment is made.